IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 17.12.2018
CORAM
THE HONOURABLE Mr.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.31934 and 31942 of 2018
and
WMP Nos.37168 and 37174 of 2018 in respective WPs

M/s.Roof Ventilation Systems,
Rep. by its Proprietrix,
E.Selvi,W/O Elumalai
No.3, I Cross Street, Thirumal Nagar,
Kuyavarpalayam, Puducherry. ...Petitioner in both W.Ps.

Vs.

1.The Commissioner (CT),
Commercial Taxes Department,
Puducherry.

2.The Commercial Tax Officer, II,
Commercial Taxes Department,
Puducherry. ...Respondents in both W.Ps.

Prayer in both W.Ps.:- Writ Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of certiorarified mandamus to call for the records CST Assessment order of recovering proceedings of the respondents dated 09.07.2018 and 16.07.2018 respectively and quash the same and to consider the "C" Forms already submitted to the respondent's web-site through online for the assessment years 2014-15 and 2015-16 respectively and pass revised assessment order accordingly and refund the amounts collected thereafter within time limit.

For Petitioner in both W.Ps. : Mr.P.Suresh
For Respondents: in both W.Ps. Mr.J.Kumaran Additional Government Pleader(P)

COMMON ORDER

These writ petitions are filed challenging the orders of assessment passed in respect of the assessment years 2014-15 and 2015-16 dated 09.07.2018 and 16.07.2018 respectively.

2. Heard both sides.

3. The grievance of the petitioner before this Court is that the Assessing Officer, before passing the impugned orders of assessment, has not issued the notice of proposal. It is further contended that necessary 'C' forms are available with the petitioner and therefore, if an opportunity is given, they would submit the same before the Assessing Officer and prove that the impugned orders are factually erroneous. It is further contended that this Court has held in very many cases that belated filing of 'C' forms cannot be reason to deny the benefit derived out of such 'C' forms.

4. Counter affidavit is filed in both these writ petitions. It is stated therein that the notice of proposal dated 02.01.2017 for the assessment year 2014-15 was issued to the petitioner through the Registered Post and the same was returned as "left". Thus, it is stated that the notices for the assessment years 2014-15 and 2015-16 were served by affixture.

5. It is seen from the impugned orders that the Assessing Officer has chosen to impose the tax liability on the petitioner only on the reason that they have not submitted their reply to the notice of proposals and also failed to produce the required declaration forms.

6. It is admitted by the respondent that the notice of proposals sent by Registered Post was returned with an endorsement "left". On the other hand, it is contended by the petitioner that no such notice was ever served on them. Therefore, it is evident that the notice of proposal sought to be served on the petitioner was returned with an endorsement 'left'. This means that such notice was not served on the petitioner.

7. As the only issue involved in the assessment proceedings is in respect of furnishing of 'C' declaration forms and as it is stated by the petitioner that those forms are readily available with them, in order to give a final opportunity to the petitioner, this Court is of the view that the matter may be remitted back to the Assessing Officer to redo the assessment after giving an opportunity of hearing to the petitioner.

8. Accordingly, both these writ petitions are allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment, after giving an opportunity of hearing to the petitioner. The petitioner shall file their reply within a period of two weeks from the date of receipt of a copy of this order, by treating

the impugned proceedings as notice of proposal. After receiving such reply, the Assessing Officer shall consider the same and pass final orders of assessment on merits and in accordance with law by giving personal hearing to the petitioner as well. The whole exercise shall be completed by
the Assessing Officer within a period of six weeks from the date of receipt of the reply from the petitioner. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vri

To
1.The Commissioner (CT),
Commercial Taxes Department,
Puducherry.

2.The Commercial Tax Officer, II,
Commercial Taxes Department,
Puducherry.

+1cc to Mr.P.Suresh, Advocate, S.R.No.87335

+1cc to the Government Pleader, S.R.No.87683 & 87684

W.P.Nos.31934 and 31942 of 2018

SV(CO)
GSP(11/01/2019)